

REMARKS

Claims 1-4, 6-16, 18-25 and 28-36 are pending in the application and are at issue.

The courteous telephonic interview granted by Examiner Channavajjala to applicants' undersigned attorney on June 27, 2006 is hereby acknowledged with appreciation. During the interview, the outstanding Office Action was discussed in detail, most notably to clarify the rejections and to discuss responses to the rejections.

Claims 1-4, 6-16, 18-25, and 28-37 stand rejected based on the contention that the present claims are not patentably distinct from claims 1-11 of U.S. Patent No. 6,821,975 ('975). As discussed during the telephonic interview, a terminal disclaimer directed to the '975 patent was filed on December 27, 2005. The examiner acknowledged the filing of this terminal disclaimer in page 2 of the Office Action, at paragraph 2 under Response to Arguments.

During the telephonic interview, the examiner agreed that this rejection was addressed in the response of December 27, 2005 and that the previously-filed terminal disclaimer overcomes the present rejection. In summary, as agreed to by the examiner, this rejection was overcome previously and will be withdrawn.

Claims 1-4, 6-16, 18-25, and 28-37 stand rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-12 of U.S. Patent No. 6,943,166 ('166) in view of the '975 patent. In view of the terminal disclaimer directed to

the '166 patent filed concurrently with this response, and in view of the previously filed terminal disclaimer directed to the '975 patent, it is submitted that this rejection has been overcome and should be withdrawn.

Claims 1-4, 6-16, 18-25, and 28-37 also stand rejected as being patentably indistinct from claims 1-12 of the '166 patent in view of the '975 patent under 35 U.S.C. §103(a). The Office Action states that this rejection can be overcome by showing that the present application, the '166 patent, and the '975 patent were commonly owned at the time of invention. During the telephonic interview, the examiner stated that such a showing would overcome this rejection.

Therefore, applicants state that the present application, the '166 patent, and the '975 patent were, at the time of invention of the present application, owned by, or subject to an obligation of assignment, to Lilly ICOS LLC. See MPEP §706.02(1)(1) and §706.02(1)(2). To further show that the inventions of the present application and the '166 and '975 patents were commonly owned, or subject to an obligation of assignment, at the time of invention, applicants provide the following assignment information.

Serial No.	Assignment Recordal	Provisional Application
10/031,464 (present application)	Reel 12877, Frame 177 May 8, 2002	60/146,924 filed August 3, 1999
U.S. Patent No. 6,821,975	Reel 13114, Frame 703 July 20, 2002	60/147,048 filed August 3, 1999
U.S. Patent No. 6,943,166	Reel 12740, Frame 679 March 25, 2002	60/132,036 filed April 30, 1999

The three applications are commonly owned by Lilly ICOS LLC.

In summary, it is submitted that the obviousness rejection of claims 1-4, 6-16, 18-25, and 28-37 under 35 U.S.C. §103(a) should be withdrawn because the cited '166 and '975 references are disqualified as prior art under 35 U.S.C. §103(c).

Claims 1-4, 6-16, 18-25, and 28-37 also stand rejected under 35 U.S.C. §103(a) as being unpatentable over the '166 patent. Applicants traverse this rejection.

As discussed in the prior rejection, the '166 patent is disqualified as prior art under 35 U.S.C. §103 because the present application and the '166 patent were, at the time of invention of the present application, owned by, or subject to an obligation of assignment, to Lilly ICOS LLC. Assignment information for the present application and the '166 patent are provided above.

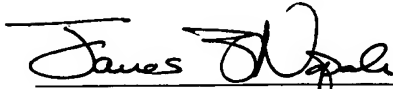
In summary, it is submitted that the rejection of claims 1-4, 6-16, 18-25, and 28-37 over the '166 patent under 35 U.S.C. §103(a) should be withdrawn because the cited '166 reference is disqualified as prior art under 35 U.S.C. §103(c).

It is submitted that the present claims are in a form and scope for allowance. An early and favorable action on the merits is respectfully requested.

Should the examiner wish to discuss the foregoing, or any matter of form in an effort to advance this application toward allowance, the examiner is urged to telephone the undersigned at the indicated number.

Respectfully submitted,

MARSHALL, GERSTEIN & BORUN LLP

By 
James J. Napoli
(Registration No. 32,361)
Attorneys for Applicants
6300 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
(312) 474-6300

Chicago, Illinois
August 7, 2006